

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

LINDA AND KEVIN YEDINAK,)
)
Plaintiffs,)
)
v.) Case No.
)
GREAT DANE LLC, et al.) JURY TRIAL DEMANDED
)
Defendants.)
)

NOTICE OF REMOVAL

COMES NOW Defendant Great Dane LLC (hereinafter “Great Dane”), by and through its attorneys, Williams Venker & Sanders, LLC, and for its Notice of Removal to the United States District Court for the Western District of Missouri, and acting pursuant to 28 U.S.C. § 1441, and invoking this Court’s jurisdiction pursuant to 28 U.S.C. § 1332, respectfully states as follows:

1. Plaintiff has commenced a civil action, currently pending in the Circuit Court of the Thirteenth Judicial Circuit, Callaway County, State of Missouri, designated as Cause Number 17CW-CV00410, wherein Linda and Kevin Yedinak are the plaintiffs and Great Dane LLC, RJ Truck Lines, LLC and Jose L. Cardenas-Villapando as defendants. This defendant has filed herewith, as Exhibit A, a copy of the state court file of Cause No. 17CW-CV00410.
2. On June 30, 2017, a copy of the Summons and Plaintiffs’ Petition were served on Defendant Great Dane’s Registered Agent in Missouri and, as computed pursuant to Rule 6 of the Federal Rules of Civil Procedure, thirty days from the date of service have not yet elapsed for the filing of this Notice of Removal.

3. Upon information and belief, and a review of the electronic docket entry on the Missouri Case Net, neither Defendant RJ Truck Lines, LLC or Defendant Jose L. Cardenas-Villapando have been served as of the date of this filling.

4. This Court has jurisdiction over this matter under 28 U.S.C. §1332, in that there is absolute diversity amongst the parties – neither of the plaintiffs are a citizen of the same state as any of the defendants – and the amount in controversy exceeds \$75,000.00.

I. There is absolute Diversity of Citizenship Among the Parties.

5. As plead in the Petition, Cause No. 17CW-CV00410 is a civil action filed by Plaintiff's, who, as identified in said Petition, are citizens of the State of Missouri, residing in Wentzville, Missouri.

6. For purposes of diversity jurisdiction, an LLC's citizenship is the citizenship of each of its members at the time the lawsuit was filed. *See one point Solutions, LLC v. Borchert*, 486 F.3D 342, 346 (8th Cir. 2007).

7. Defendant Great Dane, LLC is a limited liability company formed under the laws of Delaware and with its principal place of business in the State of Illinois. All members of Defendant Great Dane are citizens of States other than Missouri. *See Attached Exhibit B – Affidavit of David M. Rubin, Vice President of Great Dane LLC.*

8. Defendant RJ Truck Lines, LLC is a limited liability Company formed under the laws of the State of Nevada and with its principal place of business in the State of Nevada. Upon information and belief all members of RJ Truck Lines, LLC are citizens of the State of Nevada. *See Attached Exhibit C – Printout from Nevada Secretary of State Website.*

9. Upon information and belief, as alleged in Plaintiffs' Petition Defendant Jose L. Cardenas-Villapando is a citizen of the State of Nevada.

10. As such, there is complete diversity between the Plaintiffs and all Defendants.

II. The Amount in Controversy is in Excess of \$75,000.00

11. In support of the jurisdictional amount for removal, a party must prove by a preponderance of the evidence that the amount in controversy exceeds \$75,000.00, exclusive of interest and costs. *Bohannon v. Wal-mart Stores, Inc.*, 2006 WL 2571558 *1 (E.D.Mo. 2006) (*citing In re Minnesota Mutual Insurance Co. Sales Practices Litigation*, 346 F.3d 830, 836 (8th Cir. 2003)).

12. A claim will only fail to meet the requisite jurisdictional threshold when it appears, to a legal certainty, that the claim is really for less than the jurisdictional amount. *St. Paul Mercury Indemnity Co. v. Red Cab Co.*, 303 U.S. 283, 289, 58 S.Ct. 586, 590, 82 L.Ed. 845 (1938).

13 Plaintiffs' Petition states claims in excess of \$25,000.00, but fails to state an exact amount of damages sustained by Plaintiffs.

14. Count II of Plaintiffs' Petition alleges damages arising from the alleged injury and subsequent death of their decedent, including "severe and fatal injuries of personal pecuniary nature," as well as "incurr[ing] medical, funeral, and ancillary costs. *See Exhibit A – Plaintiffs' Petition ¶'s 44.*

15. Count III of Plaintiffs' Petition alleges that Plaintiffs' decedent suffered from, "conscious pain and suffering" prior to her death and she lived for two days between the accident and her death. Additionally, Count III alleges that the Plaintiffs' suffered "severe pecuniary loss and loss of services, companionship, comfort, instruction, guidance, counsel and training." *See Exhibit A – Plaintiffs' Petition ¶'s 25, 47 and 48.*

16. Count IV of Plaintiffs' Petition proports to state a claim for punitive damages. *See Exhibit A – Plaintiffs' Petition ¶'s 49-50.*

17. The nature and extent of the injuries and damages alleged in Plaintiffs' Petition damages leave no doubt that the amount in controversy is in excess of the jurisdictional requisite of \$75,000.00.

III. Conclusion.

18. Because complete diversity exists between the Plaintiff's and all of the Defendants, and because the amount in controversy exceeds \$75,000.00, exclusive of costs and interest, Plaintiffs' cause of action is one over which this Court has jurisdiction pursuant to the provisions of 28 U.S.C. § 1332(a), and is one that may be removed to this Court by this Defendant, pursuant to the provisions of 28 U.S.C. §1441(a).

Respectfully submitted

WILLIAMS VENKER & SANDERS

/s/ Michael B. Hunter _____

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ATTORNEYS FOR DEFENDANT
GREAT DANE LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing was served this 27th of July, 2017, by first-class U.S. mail, postage prepaid, and through this Court's electronic filing system, on the following:

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